IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1539 OF 1992

1. Karachi Education Society,
   774, Bhawani Peth, Pune--411 002,
   through its Secretary
2. Miss Maya Kewalram Mirchandani,
   Head Mistress, B.T. Sahani Navin
   Hind Primary School, Tadiwala Road,
   at present; and Head Mistress, B.T.
   Sahani Navin Hind Primary School,
   774, Bhawani Peth, Pune--411 002,
   in the past. Available at B.T.
   Sahani Navin Hind Primary School,
   Tadiwala Road, Pune.
3. Mr.K.M. Hemnani,
   C/o. B.T. Sahani Navin Hind Primary
   School, 774, Bhawani Peth, Pune--2. : Petitioners

V/s.

1. Shri Pruthviraj R. Merchant,
   age 46 years, occupation Nil,
   residing at 1204/8, Ghole Road,
   Pune--4.
2. The Presiding Officer, School
   Tribunal, Pune Region, Pune. : Respondents

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Mr.A.M. Joshi for the petitioners.

Mr.Y.R. Mehta for respondent no.1.

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CORAM : S.A. BOBDE, J.

January 17, 2005.

ORAL JUDGEMENT

1. Petitioner no.1, Karachi Education Society, is a public charitable trust as well as a society duly registered under the Bombay Public Trust Act and the Societies Registration Act, 1860. It runs a number of educational institutions, including B.T. Sahani Navin Hind Primary School at 774, Bhawani Peth, Pune--2.

2. By this petition, the petitioners have challenged the order of the School Tribunal dated 6.1.1992 holding that respondent no.1's resignation is not voluntary and in accordance with law and, therefore, he is entitled to reinstatement.

3. Respondent no.1 was working as an Assistant Teacher in B.T.S. Navin Hind Primary School. On 1.3.1988 he addressed a letter to the Headmaster stating that he desires to resign from his post of Asstt. Teacher with immediate effect and he sought to be relieved immediately.

After a year and about three months, he filed an appeal alleging that his resignation was forced and not in accordance with law and, therefore, he should be reinstated. The appeal is allowed by the School Tribunal which has held that the resignation is involuntary and not in accordance with section 7 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, hereinafter referred to as the "Act". Section 7 of the Act reads as follows:-

> "If any employee intends to resign his post in any private school, at any time after the appointment date, he shall draw up a letter of resignation in duplicate and sign both the copies of that letter and put the date thereon. He may then forward one copy to the Management by registered post and keep the other copy with him."

On a plain reading, the section requires the employee to draw up a letter of resignation in duplicate and put his signature. The latter part of the section suggests the mode of transmission of the resignation. It says that the employee may forward one copy to the management by registered post and keep the other copy with him. This is obviously intended to enable the employee to directly

tender the letter of resignation to the management and obtain an acknowledgement. It appears that the word "may" has been used deliberately by the Legislature.

4. Rule 40 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 reads as follows:-

> **"40. Resignation**:(1) A permanent employee may leave service after giving three calender months notice and a non-permanent employee may leave service after giving one calender month’s notice. The management may, however, allow an employee to leave service earlier on payment of pay (excluding allowances) for three months, or as the case may be, one month in lieu of notice by the employee. The amount in lieu of notice shall be restricted to the pay for the period falls short.
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> (2) If any Management allows an employee to leave service earlier either without due notice or without making payment of pay in lieu of notice as specified in sub-rule (1), a proportionate amount of pay in lieu

of notice shall be deducted from the grant due to the school concerned.

(3) An employee entitled to vacation shall not give notice of resignation during the vacation or so as to cover any part of the vacation. The notice of resignation shall not be given within a month after the beginning of the first term of the year."

5. The above provisions have fallen for consideration of this Court in N.J.B. Ashram v. Rajendra [2004 (2) Mh.L.J. 909]. Chandrachud,J. took the view that a resignation not forwarded by registered post need not be considered as invalid, irrespective of the surrounding circumstances. What is necessary is to decide whether the resignation is voluntary, having regard to the surrounding circumstances and the fact that the resignation was not submitted in the mode which has been statutorily prescribed would be a material consideration. As regards rule 40, this Court took the view that the failure to furnish three months' notice would not invalidate the resignation for the simple reason that the rule has been inserted for the benefit of the management and not the employee. Rule 40 itself provides that if the notice of three months is not furnished, the management would be

entitled to deduct a proportionate part of the wages payable for the period which falls short of the prescribed period. I am in agreement with the view expressed by Chandrachud,J. in Neminath's case (supra).

6. One may now examine the validity of the resignation in question. Undoubtedly, the resignation is in writing, though not submitted by registered post. It also does not provide for a period of three months. In law, the fact that it was not sent by registered post or that it did not provide for a notice of three months would not invalidate the resignation **ipso facto**. There is no dispute that the letter of resignation is signed by respondent no.1. What was contended before the School Tribunal and upheld is that respondent no.1 was made to sign the resignation when he was on medical leave by the management. According to respondent no.1, the then Headmistress and one Mr.Hemnani threatened respondent no.1 that he would face prosecution and even go to jail and, therefore, respondent no.1 resigned. The School Tribunal accepted that the resignation was involuntary and held that the termination was illegal since no inquiry was held.

7. As the Court exercising jurisdiction under Articles 226 and 227 of the Constitution of India, one would refrain from re-examining and reversing a finding of fact.

However, it appears necessary to do so in the present case. There is sufficient uncontroverted material on record which shows the following:-

(i) That on 13.2.1988 respondent no.1 wrote a letter to the Headmistress accepting that an amount of Rs.47,367.35 in cash collected as fees is lying with him. That he would repay the same within four days, failing which the management would take action.

(ii) On 17.2.1988 he has signed a statement showing receipt of the aforesaid amount. On 17.2.1988 he wrote a letter stating that he could not return the amount as promised and further stating that he failed to credit the fees in the Bank account and used the same for his house-hold expenditure. He apologised for the blunder. He further stated that he had permitted to withdraw the amount from his P.F. account and an amount of Rs.7,500/- be adjusted against the outstanding amount of Rs.47,367.35. In fact, he requested that if he failed to repay the balance amount, Rs.1000/- a month may be deducted from his salary.

(iii) On 22.2.1988 he wrote a letter saying that Rs.7,500/- was not available in his P.F. account

and that that account had only Rs.3,500/-. He sought for more time to repay the same.

(iv) On 26.2.1988 he wrote another letter accepting that he had fraudulently taken Rs.47,367.35 and that he is willing to pay Rs.3,500/- from his P.F. account.

8. Ultimately, on 1.3.1988 the Headmaster wrote a complaint to the police. On the same day, respondent no.1 tendered his resignation.

9. It was contended in the Memo of Appeal before the School Tribunal that the petitioners had forced respondent no.1 to sign the statement of account. However, this does not seem to have been the contention in respect of the various other letters referred to above. In fact, respondent no.1 has averred, vide para 10, that one Mr.Hemnani and Maya Kewalram helped respondent no.1 to withdraw the amount of Rs.3,000/- from his provident fund account. This obviously shows that the other letters, including the one he may have written for withdrawal of the P.F. amount were written by him voluntarily.

10. In my view, the Tribunal having failed to take into account the various other letters which are crucial, has committed a perversity which has resulted in manifest

injustice. It appears clear that respondent no.1 tendered his resignation in order to avoid prosecution.

11. Mr.Mehta, learned counsel for respondent no.1, however, submitted that respondent no.1 withdrew his resignation on the very next date i.e. on 2.3.1988. The said letter does not constitute withdrawal of the letter of resignation. In that letter, respondent no.1 has written that he has been forced to resign under letter dated 1.3.1988. In my view, there is a clear and well-marked distinction between the withdrawal of a resignation and the assertion that the resignation made earlier was forced and involuntary. Therefore, the submission of the learned counsel that the letter of resignation may be withdrawn any time before it is accepted is untenable here.

12. In the result, therefore, I find that the petition deserves to succeed. The rule is made absolute. There shall be no order as to costs.

Sd/-

S.A. BOBDE, J.